**U.S. Department of Labor**

Office of Administrative Law Judges
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**Issue date: 03Jun2002**

CASE NUMBER: 2001-LHC-3155

OWCP NO.: 08-116614

IN THE MATTER OF

MILTON GUILLIAM,
Claimant

v.

TUBULAR TECHNOLOGY, INC.,
Employer

and

DEEP SOUTH,
Carrier

APPEARANCES:

John Michael Morrow, Jr., Esq.
On behalf of Claimant

John H. Hughes, Esq.
On behalf of Employer

Before: Clement J. Kennington
Administrative Law Judge

## DECISION AND ORDER AWARDING BENEFITS

This is a claim for benefits under the Longshore and Harbor Workers' Compensation Act (the Act), 33 U.S.C. § 901, *et seq.*, brought by Milton Guilliam (Claimant) against Tubular Technology, Inc. (Employer), and Deep South (Carrier). The issues raised by the parties could not be resolved administratively, and the matter was referred to the Office of Administrative Law Judges for a formal hearing. The hearing was held on March 15, 2002, in Metairie, Louisiana.

At the hearing all parties were afforded the opportunity to adduce testimony, offer documentary evidence, and submit post-hearing briefs in support of their positions. Claimant testified and introduced thirty-two exhibits, which were admitted, including: State and Federal reports of occupational injury; numerous medical bills; medical records of Drs. Troy Martin, Fabian Lugo, and Wallace Rubin; medical records from Southern Pain and Anesthesia Consultants, Memorial Medical Center and Lafayette General Medical Center, and the deposition of Dr. Lugo.[1]

Employer introduced fifteen exhibits at the hearing, fourteen of which were admitted, including: medical records of Drs. William Nassetta, Fabian Lugo, Doreen Abadco, James Domingue and Eric G. Comstock; medical records from Memorial Medical Center; a daily operations and drilling reports detailing activities on Claimant's platform; various Department of Labor filings; employee records, a material safety data sheet for calcium chloride, and weather information from meteorologist Rob Perillo. Employer also introduced three post-hearing exhibits, which were admitted, including the deposition of David Lester, the deposition of Dr. Jay Martin Barrash, and a letter by Claimant's attorney to Dr. Abadco.

Post-hearing briefs were filed by the parties. Based upon the stipulations of the parties, the evidence introduced, my observation of the witness demeanor and the arguments presented, I make the following Findings of Fact, Conclusions of Law, and Order.

## I. STIPULATIONS

At the commencement of the hearing the parties stipulated and I find:

1. The date of the accident/injury was either May 31, 1999, or June 4, 1999;

2. An employer-employee relationship existed at the time of the accident;

3. Employer was advised of the injury on June 4, 1999;

4. Notice of Controversion was filed on June 11, 1999;

5. An informal conference was held on May 21, 2001;

6. Claimant's average weekly wage at the time of the injury was $694.31; and

7. No compensation benefits or medical expenses were paid by Employer/Carrier.

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[1] References to the transcript and exhibits are as follows: Trial Transcript- Tr.__; Claimant's Exhibits- CX-__, p.__; Employer Exhibits- EX-__, p.__; Administrative Law Judge Exhibits- ALJX-__, p.___.

## II. ISSUES

The following unresolved issues were presented by the parties:

1. Whether the alleged accident or injury was caused by the employment;

2. Claimant's entitlement to wage and medical benefits; and

3. Penalties, interest and attorney's fees.

## III. STATEMENT OF THE CASE

### A. Chronology:

Claimant has a long history of oil field employment commencing in 1979 during which he has worked as a tong operator, swivels, roustabout and roughneck. In May,1999 Employer hired Claimant as a tong operator, a position he had performed for the preceding 12 years and which he was performing for Employer at the time of his current injury. The injury occurred on the outer continental shelf off the coast of Texas on Mustang Block 115, an Enron production platform, upon which ENSCO was performing drilling operations.. Employer was a contractor hired by ENSCO to perform tong operations. (Tr.28, 31,32; 57-58). Claimant's prior medical history was unremarkable except that he had a history of high blood pressure and he smoked cigarettes. (Tr. 41).

On May 28, 1999, Claimant arrived in Port O'Connor to wait for a boat to transport him to the platform. (Tr. 49-50). On May 29, 1998, Claimant prepared his equipment. (Tr. 51). On May 30, 1999, considering the fact that Claimant began work at 5:30 a.m., Claimant was required to operate the tongs prior to 6:00 a.m. to perform the activity of: "Pull out of hole with tubing string, hanger, pop joints, and seven joints 2-7/8 tubing." (Tr. 62, 108; EX 9, p. 17). At 7:30 a.m. Claimant was required to pull tubing from the well, a job that lasted until 4:00 p.m., or eight and one-half hours. (Tr. 114; EX 9, p. 17). Claimant also testified that his work did not end at 4:00 p.m. because he was required to train another person to operate the tongs and his work day did not end until around 8:00 p.m. (Tr. 63-64). Temperatures on May 30, 1999, topped out around eighty-eight degrees. (EX 12, p. 2).

May 30, 1999, was the day that Claimant alleged exposure to calcium chloride and alleged the onset of his sickness and other symptoms of a stroke. (Tr. 51, 109). Claimant testified that about an hour after he was first exposed to the calcium chloride (which occurred before 6:00 a.m. in the morning), he began to feel cramping in his stomach and dry mouth. (Tr. 62-63). Later in the evening, Claimant began to feel nauseated, dizzy, and had episodes of vomiting and diarrhea. (Tr. 38-39, 62).

Claimant continued working for another three days, but each successive day he stated that he experienced worse symptoms. (Tr. 40, 42). Claimant stated that his right side became weak and his equilibrium was out of balance such that he started falling to the right. (Tr. 45). The calcium chloride caused a rash in his ear, and Claimant related that he felt continually dehydrated. (Tr. 45). The next morning Claimant told the driller that he was sick and that he could not work anymore. (Tr. 75). On June 4, 1999, Mr. Mahaffey, the Enron representative, ordered a helicopter to take Claimant to Memorial Hospital at Port LaVaca, Texas (Tr. 41, 43, 46, 79, 83). No assistance was provided to Claimant to exit the helicopter and Claimant fell, hitting his back on the helicopter seat. (Tr. 47).

Claimant arrived at the Memorial Medical Center triage unit at 1:45 p.m. on June 4, 1999, complaining of dizziness, blurred and double vision. (CX 31, p. 11). Claimant was very unsteady on his feet with a tendency to fall to the right. *Id*. at 40. Claimant also had right sided weakness and drooping of the right eye lid and right side of his mouth, as well as double vision, but Claimant was able to answer questions and there were no complaints of pain or discomfort. *Id*. Diagnostic tests included: a CT scan of the brain, which was negative; a brain MRI, which was normal; and a bilateral carotid doppler ultrasound, which showed minimal arteriosclerotic plaque in the right common carotid artery and its branches as well as hard plaque on the left side. *Id*. at 108-110. Dr. Bunnell, Claimant's treating physician on arrival at Memorial Medical Center, diagnosed: acute onset of vertigo, concern over central vestibular disorder; a history of cigarette abuse; history of hypertension; and a family history of cardiovascular disease. *Id*. at 105. When Claimant was discharged on June 8, 1999, Dr. Bunnell diagnosed a probable brain stem infarction; hypertension; cigarette abuse and type II hypercholesterolemia with associated low HDL. *Id*.

On June 22, 1999, Claimant began treatment with Dr. Lugo in relation to his exposure to calcium chloride. *Id*. A thoracic arch aortogram, performed June 23, 1999, revealed that Claimant had a twenty percent "diameter stenosis proximal right internal cartoid artery 2 cm from its origin" and Claimant had "[m]ild to moderate diffuse stenoic narrowing of the vertebral basilar artery system. (EX 3, p. 59). A June 25, 1999, MRI revealed no evidence of any inter-cranial pathology. *Id*. at 53.

Around June 30, 1999, Dr. Martin began treating Claimant in response to complaints of pain in the neck, right lower back, and constipation among other symptoms. (CX 27, p. 18). On that date, Dr. Martin diagnosed Wallenberg syndrome, or a problem with the brain stem, neck and back pain, constipation, and tobacco abuse. *Id*. On July 8, 1999, Dr. Lugo indicated that Claimant also had abnormal anticardiolipins but the significance of this fact was unclear. (EX 2, p. 49).

On July 12, 1999, Claimant was again admitted to the care of Dr. Troy Martin, with the diagnosis of new onset of diabetes, when he was found to have elevated glucose levels and symptoms of dehydration with complaints of orthostatic hypotension . (CX 32, p. 238, 241). At Claimant's insistence, he was sent home from the hospital on July 14, 1999, and instructed on a diabetic diet. *Id*.

On August 5, 1999, Dr. Lugo noted that Claimant continued to wear an eye patch for mild

ptosis of the right superior eyelid and Dr. Lugo opined that Claimant may have mild weakness in the right lateral rectus muscle as well as subjective dystesthesias below the left shoulder. (EX 2, p. 48). Dr. Lugo recommended continued occupational and physical therapy and prescribed medication to reduce Claimant's antiocardiolipin levels. *Id*. Dr. Lugo's impression was that Claimant had suffered a stroke to the brainstem area. (CX 28, p. 1). Dr. Lugo further stated that Claimant' work conditions could contribute to his stroke, but Claimant also had multiple pre-existing risk factors for cerebrovascular disease and a stroke could have happened under any circumstance. *Id*.

On November 22, 1999, Dr. Steven Staires, from the Lafayette General Medical Center, Pain Center, related that Claimant was exposed to a zinc solution on the job and suffered a brain stem stroke. (CX 32, p. 316). After several months of physical therapy, Claimant was able to walk with a cane and had improved vision, but had since developed high blood pressure, diabetes, and sexual dysfunction. *Id*. On a ten point scale, Claimant rated his pain an eight with a maximum level of ten. *Id*. at 312. Dr. Staires impression was that Claimant had "status post brain stem CVA with Wallenberg's syndrome and multiple chronic pain sites." *Id*. at 316. Dr. Staires further referred Claimant for a psychological evaluation to rule out clinical depression and to assist him with psychological and emotional adjustment to his chronic problems including chronic medical illness and chronic pain. *Id*. Additionally, concerned that there was a myofascial component to his pain, Dr. Staires referred Claimant for more physical therapy to see what modalities could improve his symptoms. *Id*. at 317. Last, Dr. Staires recommended biofeedback in an attempt to relieve burning his Claimant's shoulder. *Id*.

By January 13, 2000, Dr. Staires related that drug therapy had improved Claimant's condition to a point where he could walk up to one-half mile a day. (CX 32, p. 315). After one biofeedback session, Claimant learned that his insurance carrier, Blue Cross, would not cover the cost of biofeedback so Claimant cancelled that therapy. *Id*. at 300, 303, 309. On May 9, 2000, Dr. Staires reiterated that Claimant's pain seemed to be fairly well controlled with drug therapy consisting of Oxycontin and Neurontin. *Id*. at 31.

Dr. Nassetta, a toxicologist, performed an examination of Claimant on May 19, 2000. (EX 1, p. 1). Claimant related to Dr. Nassetta that he was either exposed to zinc bromide or calcium bromide and that radiation was present in the pipes he was dealing with. *Id*. Dr. Nassetta stated that he could not make a causality determination without more information regarding the diagnosis of Wallenberg's Syndrome and a more through review of the literature. *Id*. at 4. A causative analysis could best be made by a neuro-toxicologist. *Id*.

On June 14, 2000, Claimant was re-admitted to Lafayette General in the care of Dr. Martin with complaints of fainting. (CX 32, p. 175). Claimant did not quite lose consciousness, but he felt very sleepy and had trouble holding a glass of water. *Id*. The ambulance crew recorded his blood pressure in the hypotensive range. *Id*. Nonetheless, Dr. Martin noted that Claimant was essentially asymptomatic after a review of his systems. *Id*. Dr. Martin's impression was a vasovagal near syncope and Claimant was discharged on June 14, 2000. *Id*. at 180.

On June 29, 2000, Dr. Rubin, one of Claimant treating physicians, diagnosed Claimant with Labyrinthine Abnormality. (CX 29, p. 3). Diagnostic testing revealed that Claimant had a significant irritative pathology of the temporal lobes, greater on the left side, that did not appear to be associated with any major structural lesion, but there was significant biological and neurophysiologic abnormalities. *Id*. Based on his history, Dr. Rubin related Claimant's condition to this chemical exposure, but, he stated that he was not qualified to completely explain Wallenberg's Syndrome. *Id*. at 4. Dr. Rubin's prognosis for future medical problems was that Claimant would continue to experience difficulties, but Claimant had shown much improvement through treatment and a tentative prognosis could be better ascertained after a year of treatments and follow-up. *Id*.

By October 3, 2000, Dr. Lugo noted that Claimant continued physical therapy three time per week and that Claimant gained twenty-one pounds in the past six months. (EX 2, p. 43). Although Claimant had a tendency to move to the right his overall balance was improving. *Id*. Likewise, Clamant had difficulty performing rapid alternating movements and continued to walk with a cane. *Id*. From a neurological standpoint, however, Dr. Lugo opined that Claimant was stable. *Id*.

On March 6, 2001, Claimant complained to Dr. Abadco of a burning pain in his left arm, and leg, as well as shoulder pain, and trouble with his right eye. (CX 30, p. 7). An MRI of the lumbar spine, performed on February 7, 2001, demonstrated excessive epidural fat on L5-S1 resulting in a narrowing of the thecal sac, but there was no evidence of disc herniation or forminal stenosis. *Id*. Dr. Jenkins who performed the MRI thought it was indicative of L5-S1 epidural lipomatosis. (EX 3, p. 9). A CPT of the nerves from L1 through S1 showed severe right S1 radiculopathy. (EX 30, p. 7). After reading Dr. Lugo's notes, Dr. Abadco assessed Claimant's problem as Wallenberg Syndrome with brain stem CVA, hypertension, diabetes mellitus, and neuropathic pain and central pain. (CX 30, p. 9-10). Dr. Abadco's plan was to refer Claimant to Dr. Domingue, a neurologist, for further evaluation and treatment, and to Dr. Callendar, a toxic environmental specialist, to evaluate his condition. *Id*. at 10.

On September 4, 2001, Dr. Hubble diagnosed Claimant with lumbar radiculopathy and left side neuropathic pain. (CX 30, p. 18). By November 26, 2001, Dr. Hubble noted that Claimant's prognosis was good and that Claimant had reduced pain, increased leg circulation and strengthened the muscles in his legs. *Id*. at 17.

On September 17, 2001, Dr. Domingue, a neurologist, examined Claimant on a referral from Dr. Abadco. (EX 5, p. 3). Dr. Domingue listed Claimant's problems as: stroke, hypertension, diabetes, low back pain and vascular headache. *Id*. at 5. Dr. Domingue opined that Claimant had a stroke because his hypertension, diabetes and smoking were all risk factors for a stroke. *Id*. Dr. Domingue could not discern any relationship between chemical exposure (calcium bromide) or presumed dehydration to the onset of the stroke. *Id*. He also attributed Claimant's low back pain to an altered gait and the fact that Claimant had gained nearly eighty pounds. *Id*. at 4, 5. Regarding the need for another MRI at a higher resolution to ascertain diagnostic data on Claimant's stroke, Dr. Domingue related that Claimant would not likely be able to fit into a closed scanner. *Id*. at 2.

On March 13, 2002, Dr. Comstock issued a report conveying that he was able to discern that the chemical Claimant was exposed to was calcium chloride diluted in sea water. (EX 14, p. 2). Dr. Comstock opined that Claimant's clinical course was consistent with a brainstem infarct especially considering his history of poorly-controlled hypertension. (EX 14, p. 2). Dr. Comstock related that the brainstem stroke as a result of an infarct was a spontaneous occurrence and exposure to calcium chloride "had no possible relationship whatsoever" to Claimant's clinical course. *Id*. Dr. Comstock further related that calcium chloride was an "extremely innocuous material," and that Claimant's continuing illnesses and disability was the result of the "diseases of life and a condition for which hypertension is an extremely high risk factor." *Id*. at 3.

On May 7, 2002, Dr. Barrash opined that Claimant suffered from a stroke. (EX 19 p. 10). Claimant was at particular risk because he was diabetic, hypertensive, non compliant with medicine, a smoker, obese, Afro American and he had high cholesterol and high triglycerides. *Id*. at 14. All of these factors were present for many years before Claimant's workplace accident. *Id*. at 14-15. Dr. Barrash opined that the calcium chloride Claimant was exposed to had absolutely no affect on Claimant and did not contribute to his stroke. *Id*. at 16. Dr. Barrash did not think that Claimant's work conditions, sickness or vomiting, had even the smallest part in causing Claimant's stroke. *Id*. at 17. Claimant was going to have a stroke because he had all the prodrome making a stroke inevitable. *Id*. Although over-exertion would have no affect on a person pre-disposed to having a stroke, dehydration could be a contributing factor. *Id*. at 23. Vomiting and had diarrhea could participate and add to dehydration. *Id*. One of the symptoms of a posterior fossa stroke, however, was nausea and vomiting and dehydration may come about as the stroke progresses. *Id*. at 29. Dr. Barrash admitted that Claimant back condition was work related inasmuch as it was a result of his stroke and the stroke was work related. *Id*. at 27.

**B. Claimant's Testimony**

Claimant testified that in May 1999, he was working as a tong operator spinning and removing piping from the sea floor out of a completed well. (Tr. 33). On May 31, 1999, Claimant stated that he began his duties as the tong operator, a position that entailed heavy manual labor, on a hot day (89-90 degrees) wearing a slicker (rain) suit over top of long sleeve coveralls. (Tr. 35, 46). Although it was not raining that day, the driller instructed him to wear the slicker because he anticipated that Claimant would get wet while removing and breaking the pipe from the well. (Tr. 35). Claimant testified that he was going to get wet because his supervisors decided not to displace the fluid that was already in the well. (Tr. 55).

Claimant testified that he was required to operate the tongs to help fish out a packer sleeve that was plugging up the well. (Tr. 35-36, 53-54). When Claimant did so, fluid calcium chloride splashed from the top of the pipe onto Claimant. (Tr. 35-36). Every time Claimant "would make a connection and break" calcium chloride would get into his nose, mouth and ears. (Tr. 38). Claimant was not wearing a face shield because there was not one available. (Tr. 38). Claimant laid nine joints, each of which took Claimant ten to fifteen minutes to install. (Tr. 56). Claimant finished the job and stated that he began to experience nauseousness, dizziness, diarrhea and vomiting. (Tr. 38-

39).

Claimant had performed this type of job on several prior occasions but he was always supplied with a hard had and a face shield. (Tr. 58). Occasionally Claimant was supplied with a respirator. (Tr. 59). Claimant testified, however, that his well was so wet that even his rubber gloves were soaking and the liquid was entering his pores. (Tr. 59). While Claimant had been exposed to calcium chloride on many prior occasions, all other exposures were diluted with seawater, whereas the well Claimant was working on had not been "displaced." (Tr. 60).

No medic was onboard the rig but Claimant obtained some Alka-Seltzer Plus form a barge engineer and took some Dramamine. (Tr. 39). Claimant continued working for another three days, but each successive day he stated that he experienced worse symptoms. (Tr. 40, 42). Claimant stated that his right side became weak and his equilibrium was out of balance such that he started falling to the right. (Tr. 45). The calcium chloride caused a rash in his ear, and Claimant related that he felt continually dehydrated. (Tr. 45). After Claimant threw-up for five or six hours in his room, a fishing tool hand forced Claimant to leave the area because he could not sleep. (Tr. 74). The next morning Claimant told the driller that he was sick and that he could not work anymore. (Tr. 75). Claimant did not tell his supervisor, Mr. Mahaffey, the Enron representative that filled out his work ticket, that he was sick until around June 3, 1999. (Tr. 79). Mr. Mahaffey attempted to contact Employer, but when he was unsuccessful, he ordered a helicopter to take Claimant from the rig to Memorial Medical Center at Port LaVaca, Texas. (Tr. 41, 43, 46, 83).

Claimant stated that he was not given any assistance in getting out of the helicopter, and in attempting to exit he fell, hitting his back on the helicopter seat. (Tr. 47). Since that time Claimant stated that his S1 nerve suffered damage that caused his back to "lock up." (Tr. 47).

At Memorial Medica l Center, Claimant stated that the doctor told him that he was dehydrated and that he had suffered a stroke. (Tr. 47). During his five day stay in the hospital, Dr. Bunnell, his treating physician, gave him twelve IV bags to re-hydrate. (Tr. 89-90). Claimant testified that he receives continued medical care for treatment of his back in the form of epidural steroids, and is unable to perform any work. (Tr. 48). Claimant alleged that Employer had not paid any of his medical bills. (Tr. 48).

**C. Testimony of Trial Witnesses**

**C(1) Testimony of William Tyler Livingston**

Tyler Livingston, the operations manager for Employer for eight years, was responsible for all functions of the company apart from accounting and sales. (Tr. 99). Mr Livingston testified that the tongs Claimant used on the day of his injury basically functioned as two wrenches - weighing 2500 pounds and hung from a cable - one holds the pipe and is hydraulically operated - the second rotates the pipe to either make or break a connection. (Tr. 101).

Mr. Livingston testified that Claimant's testimony concerning fluid that flowed from the top of a joint that was thirty feet up in the air was inconsistent because that event would indicate that the well was still active and producing enough force down hole to push the fluid out. (Tr. 103). Performing an operation in that condition would be "asking for a catastrophic failure." (Tr. 103-04). Mr. Livingston further testified:

> The drilling reports clearly state that - - what the measured bottom hole pressure was, how much fluid was on top of it with certain weight and its consistency, and the two don't jibe. If you have this fluid on top of that pressure, you can't have fluid coming out of the top. Physically impossible.

(Tr. 104).

Second, in Mr. Livingston's experience, when pipe is being broken and fluid is in the joints as it is being broken, there may be a small amount of horizontal type spray but "nothing to the extent that it would blow all across the floor." (Tr. 104). Claimant was also using a "mud basket" which would prevent fluid from spilling everywhere. (Tr. 105). Reading reports from the International Association of Drilling Contractors ( IADC), or a chronological sequence of events of platform operations required by the Mineral Management Service, Mr. Livingston testified that nothing unusual was occurring that would warrant attention. (Tr. 106). On May 28-29, 1999, the IADC report stated that testing of safety equipment was conducted. (Tr. 106). On May 30, 1999, the IADC reports indicated that at 3:00 a.m. Employer's service hand began to "[b]ack out and lay down pins at wellhead." (Tr. 107). From 5:00 a.m. to 6:00 a.m. The report read: "Pull out of hole with tubing string, hanger, pop joints, and seven joints 2-7/8 tubing." (Tr. 108). Mr. Livingston related that his was the day that Claimant alleged exposure to the chemical. (Tr. 109). The IADC report further stated that fifty-one barrels of nine pound calcium chloride, representing five to eight percent of the barrel weight,[2] was used to displace the well. (Tr. 110). Furthermore, in his experience as a tong operator, Mr. Livingston stated that he did not use a face shield because calcium chloride was relatively innocuous. (Tr. 112).

Between 6:00 a.m. and 7:30 a.m. on May 30, 1999, no tong operator was needed for operations on the rig. (Tr. 113-14). At 7:30 a.m. the IADC report reflects that Claimant was needed to pull tubing from the well, a job that lasted eight and one-half hours. (Tr. 114). On June 1, 1999, considering the fact that Claimant was only working the day shift, the IADC report reflects that there was no job for a tong operator to perform. (Tr. 117). On June 2, 1999, Claimant's services were required for eight hours, and on June 3, 1999, only three and one-half hours were required of Claimant as a tong operator and the rest of the day was spent in different operations. (Tr. 118-19).

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[2] Nine pounds per gallon refers to the weight of the fluid by volume. Mr. Livingston testified that sea water weighs 8.4-8.6 pounds per galleon and nine pound calcium chloride means that enough calcium chloride was added to raise the weight of a gallon of water to make it nine pounds. (Tr. 111).

Additionally, on June 4, 1999, the IADC report indicated that the tongs were in use, during Claimant work shift, from 5:30 a.m. to 12:00 p.m. (Tr. 124). Mr. Livingston also testified that the duties of a tong operator were not physically demanding. (Tr. 123).

**C(2) Testimony of Calvin Barnhill**

Mr. Barnhill is a licensed professional petroleum engineer, a job that entailed reservoir engineering, production engineering, and drilling engineering, for the purpose of identifying oil and gas deposits, drilling for those deposits, producing them and determining how much oil and gas is in the area and the value of it. (Tr. 138). In his thirty-three years of experience, Mr. Barnhill started as a roustabout, working his way up the ranks and performing nearly every position on the drilling rigs. (Tr. 139).

Employer retained Mr. Barnhill as an expert to review drilling operations records involving the job performed by ENSCO between May 28, 1999 and June 4, 1999. (Tr. 140-41). As a general matter, Mr. Barnhill testified that the IADC reports are accurate and reliable reflections of what transpired concerning drilling operations. (Tr. 142). Mr. Barnhill also reviewed the Enron daily summaries, prepared by the Enron company man, and found no major discrepancies between the two reports. (Tr. 142).

Mr. Barnhill testified that there were no operations being performed on May 28 or 29, 1999, that would have involved a contract tong operator. (Tr. 144). The reports did not indicate that the pipe had broken off from the packer or that the pipe had parted as related by Claimant. (Tr. 147). Nine pounds of calcium chloride, means that on a volume basis, the solution is about three percent calcium chloride, but on a weight basis that would be eleven or twelve percent. (Tr. 152). In Mr. Barnhill's experience, he had never used a face shield for calcium chloride and had never seen anybody wearing a face shield while working with calcium chloride. (Tr. 153).

In breaking the pipe, if there is fluid in the tubing above the connection, the pipe will jump a little when it is un-threaded and depending on the degree of separation, spray will come from the broken joint. (Tr. 159-60). The tongs, however, are situated in a manner that covered the joint, thus limiting the exposure of the operator to the spray. (Tr. 160). Typically, the connection is broken three to four feet from the surface. (Tr. 161). When there is not a need for the tong operator on the rig floor, the tong operator is either servicing his equipment or allowed to leave the area until called. (Tr. 168). On June 2, 1999, Claimant was required to operate the tongs for about nine hours. (Tr. 169). On June 3, 1999, a tong operator would likely have been working for seven to seven and one-half hours. (Tr. 178).

**D. Exhibits**

**(1) Employee Records**

Pre-employment information gather by Employer revealed that Claimant did not have any

significant medical history, but Claimant did suffer from high blood pressure. (EX 13, p. 33-37, 41-45). Claimant related that he only had one beer every three to four days. *Id*. at 34. While Claimant passed pre-employment drug screening, he failed a March 1, 1999 test when he was tested positive for cocaine. *Id*. at 65. Clamant had missed work that day because he was in jail with a drug and alcohol problem. *Id*. at 67. Claimant had two other employment violations in his records: one for an un-excused absence when he was unable to attend work due to intoxication, and a second for an un-excused absence at a tong operator's meeting. *Id*. at 69-70.

**(2) Medical Records from Memorial Medical Center**

Claimant arrived at the Memorial Medical Center triage unit at 1:45 p.m. on June 4, 1999, complaining of dizziness, blurred and double vision. (CX 31, p. 11). Claimant also related that his symptoms began on June 3, 1999 when his back right side started to hurt, he was unable to walk without tilting to the right side, and he was nauseous and dizzy. *Id*. Claimant was placed in a wheel chair because he was very unsteady on his feet with a tendency to fall to the right. (CX 31, p. 40). Claimant also had right sided weakness and drooping of the right eye lid and right side of his mouth, as well as double vision, but Claimant was able to answer questions and there were no complaints of pain or discomfort. *Id*. Diagnostic tests included: a CT scan of the brain, which was negative; a brain MRI, which was normal; and a bilateral carotid doppler ultrasound, which showed minimal arteriosclerotic plaque in the right common carotid artery and its branches as well as hard plaque on the left side. (CX 31, p. 108-110). Dr. Bunnell, Claimant's treating physician on arrival at Memorial Medical Center diagnosed: acute onset of vertigo - concern over central vestibular disorder; a history of cigarette abuse; history of hypertension; and a family history of cardiovascular disease. *Id*. at 105. When Claimant was discharged on June 8, 1999, Dr. Bunnell diagnosed a probable brain stem infarction; hypertension; cigarette abuse and type II hypercholesterolemia with associated low HDL. *Id*.

**(3) Medical Records and Deposition of Dr. Fabian Lugo**

Dr. Lugo, a neurologist and neuro-physiologist, related that he first treated Claimant on June 22, 1999, as a new patient in relation to an exposure to calcium chloride on May 31st of that year. (CX 28, p. 1). A thoracic arch aortogram, performed June 23, 1999, revealed that Claimant had a twenty percent "diameter stenosis proximal right internal cartoid artery 2 cm from its origin" and Claimant had "[m]ild to moderate diffuse stenoic narrowing of the vertebral basilar artery system. (EX 2, p. 59). According to Dr. Lugo's notes, Claimant began to experience increasingly severe symptoms of nausea, severe sweating, weakness, dizziness, vertigo-like sensations, numbness on the left side of his body, droopiness of the right eyelid, slurred speech, and impaired vision. (CX 28, p. 1). An MRI revealed no evidence of any intercranial pathology. *Id*. at 53. Dr. Lugo's impression was that Claimant had suffered a stroke to the brainstem area. (CX 28, p. 1). Dr. Lugo further stated that Claimant was working strenuously in very hot conditions prior to the onset of his symptoms. *Id*. As such, Claimant likely became dehydrated which would affect his blood consistency and would contribute to his stroke. *Id*. Nevertheless, Claimant already had multiple pre-existing risk factors for cerebrovascular disease and a stroke could have happened under any circumstance. *Id*.

On July 8, 1999, Dr. Lugo indicated that Claimant also had abnormal anticardiolipin but the significance of this fact was unclear. *Id*. at 49. On August 5, 1999, Dr. Lugo noted that Claimant was admitted to the hospital with diabetic ketoacidosis. (EX 2, p. 48). Claimant continued to wear an eye patch for mild ptosis of the right superior eyelid and Dr. Lugo opined that Claimant may have mild weakness in the right lateral rectus muscle as well as subjective dystesthesias below the left shoulder. *Id*. Dr. Lugo recommended continued occupational and physical therapy and prescribed medication to reduce Claimant's antiocardiolipin levels. *Id*. On November 4, 1999, Claimant complained that his left side, especially his leg, felt as if it were on fire and his left upper extremity felt as if it were cold. *Id*. at 47. Claimant also complained of right posterior neck pain. *Id*. At his next scheduled treatment date, March 13, 2000, Claimant complained of tendinitis in the shoulder, but Dr. Lugo made no changes in Claimant's treatment . *Id*. at 46.

By October 3, 2000, Dr. Lugo noted that Claimant continued physical therapy three time per week and that Claimant gained twenty-one pounds in the past six months. (EX 2, p. 43). Although Claimant had a tendency to move to the right his overall balance was improving. *Id*. Likewise, Clamant had difficulty performing rapid alternating movements and continued to walk with a cane. *Id*. From a neurological standpoint, however, Dr. Lugo opined that Claimant was stable. *Id*.

Claimant noticed the deposition of Dr. Lugo on February 4, 2002. (CX 33, p. 1). Dr. Lugo was familiar with calcium chloride, a substance that can cause irritation and affect different organs of the body, but he did not think that it could cause a stroke. *Id*. at 8. Also, based on the symptoms of exposure on the Material Safety Data Sheet concerning calcium chloride, including irritation of mouth, throat, digestive track, irritation and corneal damage to eyes, and irritation to nose, throat and respiratory track, Dr. Lugo stated that there was no physical evidence of exposure on the date that he examined Claimant. *Id*. at 16. It was possible, however, that the calcium chloride could have caused some transient gastrointestinal disturbance with no obvious permanent damage. *Id*. at 16-17.

Even though a CT scan, and MRI scan did not show evidence of a stroke, Dr. Lugo opined that Claimant still suffered a stroke because the particular diagnostic studies would not likely show such evidence. (CX 33, p. 9-10). Although, the calcium chloride would not be a likely cause for a stroke, working strenuously in hot conditions could exacerbate or aggravate a pre-existing condition and have a causative role in bringing about a stroke. *Id*. at 8. Hot weather conditions act to deplete an individual's fluids, and depending on the health of a person can affect their blood constitution. *Id*. at 10. Claimant would likely have a stroke regardless of whether he was working, but given the circumstances, Dr. Lugo opined that the situation contributed to the onset of the stroke. *Id*. Dr. Lugo defined over-exertion as excessive sweating without the proper intake of fluids, or the excessive production of heat in the body. *Id*. at 20. Excessive heat is a relative term and is defined differently depending on the individual. *Id*. In Claimant's case, Dr. Lugo stated that one must look at the symptoms of dehydration - dizziness, lightheadedness, excessive thirst, weakness - to determine what was excessive heat. *Id*.

Because of the injury, Dr. Lugo opined that Claimant would not be able to return to the same type of work due to difficulty in coordination and vision, but he may be able, with rehabilitation therapy, to do some type of sedentary activity. (CX 33, p. 10-11). Concerning suitable employment, however, Dr. Lugo would defer to a functional capacity exam. *Id*. at 23.

**(4) Medical Records from Lafayette General Medical Center**

A June 23, 1999 thoracic arch aortogram revealed a "20% diameter stenosis proximal right internal cartotid artery 2 cm from its origin, " and mild to moderate diffuse stenotic narrowing of the vertebral basilar artery system. (CX 32, p. 224). X-rays of the cervical spine taken on June 19, 1999, reveled mild generalized degenerative changes but was otherwise unremarkable. *Id*. at 223. Likewise, a CT scan of the brain was unremarkable. *Id*. at 222.

On November 22, 1999, Dr. Steven Staires, from the Lafayette General Medical Center, Pain Center, related that Claimant was exposed to a zinc solution on the job and suffered a brain stem stroke. (CX 32, p. 316). Dr. Staires was uncertain on how these two events were related, but nonetheless, it was the chronology of events. *Id*. After several months of physical therapy, Claimant was able to walk with a cane and had improved vision, but had since developed high blood pressure, diabetes, and sexual dysfunction. *Id*. Although Claimant suffers a constant pain in his right posterior neck, left posterior shoulder, left leg and within the last week had acute bilateral lumbar pain likely due to a muscular strain, Claimant did have improved strength and coordination. *Id*. On a ten point scale, Claimant rated his pain an eight with a maximum level of ten. *Id*. at 312. Dr. Staires impression was that Claimant had "status post brain stem CVA with Wallenberg's syndrome and multiple chronic pain sites." *Id*. at 316. Dr. Staires further referred Claimant for a psychological evaluation to rule out clinical depression and to assist him with psychological and emotional adjustment to his chronic problems including chronic medical illness and chronic pain. *Id*. Additionally, concerned that there was a myofascial component to his pain, Dr. Staires referred Claimant for more physical therapy to see what modalities could improve his symptoms. *Id*. at 317. Last, Dr. Staires recommended biofeedback in an attempt to relieve burning his Claimant's shoulder. *Id*.

By January 13, 2000, drug therapy had improved Claimant's condition to a point where he could walk up to one-half mile a day. (CX 32, p. 315). After one biofeedback session, Claimant learned that his insurance carrier, Blue Cross, would not cover the cost of biofeedback so Claimant cancelled that therapy. *Id*. at 300, 303, 309. Claimant's one biofeedback session reduced his pain level and gave Claimant a significant sense of control over what was happening. *Id*. at 300.

On May 9, 2000, Dr. Staires noted that after several months of treatment, Claimant's pain seemed to be fairly well controlled with drug therapy consisting of Oxycontin and Neurontin. (CX 32, p. 31). Dr. Staires also related that despite his previous concerns about possible sympathetic and/or autonomic dysfunction pain components, his recommended biofeedback sessions were not approved nor initiated. *Id*. On August 2, 2000, Dr. Mampilly, also of the Pain Center, prescribed a TEENS unit for Claimant. *Id*. at 30. On October 3, 2000, nursing notes indicated that Claimant

was able to ambulate 1 ½ miles. *Id*. at 17.

On June 14, 2000, Claimant was re-admitted to Lafayette General in the care of Dr. Martin with complaints of fainting. (CX 32, p. 175). Claimant did not quite lose consciousness, but he felt very sleepy and had trouble holding a glass of water. *Id*. The ambulance crew recorded his blood pressure in the hypotensive range. *Id*. Nonetheless, Dr. Martin noted that Claimant was essentially asymptomatic after a review of his systems. *Id*. Dr. Martin's impression was a vasovagal near syncope and Claimant was discharged on June 14, 2000. *Id*. at 180.

**(5) Medical Records of Dr. Troy Martin**

On June 27, 1999, Claimant filled a questionnaire from Carrier indicating that he was injured on Rig ENSCO #93 on June 3, 1999 at 4:30 p.m. (CX 27, p. 5). In describing the accident he stated that he experienced dizziness and nausea around 3:30 p.m. and reported the fact of his illness to barge engineer at 4:30 a.m. because there was no medical personnel on board. *Id*. His last day of work was June 4, 1999, and when he filled out the questionnaire, he indicated that his general health was "good." *Id*. at 6.

Dr. Martin began treating Claimant around June 30, 1999 in response to complaints of pain in the neck, right lower back, and constipation among other symptoms. (CX 27, p. 18). On that date, Dr. Martin diagnosed Wallenberg syndrome, or a problems with the brain stem, neck and back pain, constipation, and tobacco abuse. *Id*. On July 12, 1999, Dr. Martin diagnosed new onset of diabetes when he was found to have elevated glucose levels. (CX 32, p. 241). Due to Claimant's dehydration, complaints of orthostatic hypotension, and the new onset of diabetes, Claimant was admitted to Lafayette General Medical Center. *Id*. at 238. At Claimant's insistence, he was sent home on July 14, 1999, and instructed on a diabetic diet. *Id*.

On January 30, 2001, Dr. Martin wrote a letter indicating that Claimant was admitted to the hospital in June 1999 after suffering "an infarct of the right lateral medulla." (CX 27, p. 1). An angiogram revealed a twenty percent stenosis of the proximal right internal right carotid artery and mild to moderate diffuse stenosis of the vertebral arteries. *Id*. Additionally, Claimant had high blood pressure, high cholesterol and diabetes. *Id*. Dr. Martin further stated:

> Although Mr. Guilliam did have preexisting conditions that would predispose him to developing a stroke, it is possible that his overexertion and heat exposure on the day of the stroke exacerbated or aggravated his preexisting conditions. Dehydration due to working strenuously in hot conditions could have decreased blood volume enough to contribute to the development of his stroke.

(CX 27, p. 1).

**(6) Medical Records of Dr. William Nassetta**

Dr. Nassetta, a toxicologist, performed an examination of Claimant on May 19, 2000. (EX

1, p. 1). Claimant related to Dr. Nassetta that he was either exposed to zinc bromide or calcium bromide and that radiation was present in the pipes he was dealing with. *Id*. Claimant also related that he would normally wear a face shield during such an operation. *Id*.

Unaware that Claimant was actually exposed to calcium chloride and not zinc chloride, Dr. Nassetta could not render a proper opinion. (EX 1, p. 3). Dr. Nassetta opined that zinc bromide was an irritant of low toxicity, but Claimant's symptoms were consistent with such an exposure. *Id*. at 3-4. Dr. Nassetta stated that he could not make a causality determination without more information regarding the diagnosis of Wallenberg's Syndrome and a more through review of the literature. *Id*. at 4. A causative analysis could best be made by a neuro-toxicologist. *Id*.

**(7) Medical Records of Dr. Wallace Rubin**

On June 29, 2000, Dr. Rubin, one of Claimant treating physicians, diagnosed Claimant with Labyrinthine Abnormality. (CX 29, p. 3). Diagnostic testing revealed that Claimant had a significant irritative pathology of the temporal lobes, greater on the left side, that did not appear to be associated with any major structural lesion, but there was significant biological and neuro-physiologic abnormalities. *Id*. Based on his history, Dr. Rubin connected Claimant's condition to this chemical exposure, but he stated that he was not qualified to completely explain Wallenberg's Syndrome. *Id*. at 4. Dr. Rubin's prognosis for future medical problems was that Claimant would continue to experience difficulties, but Claimant had shown much improvement through treatment and a tentative prognosis could be better ascertained after a year of treatments and follow-up. *Id*.

**(8) Medical Records from Southern Pain and Anesthesia Consultants**

On March 6, 2001, Dr. Doreen Abadco related that she continued to treat Claimant for a burning pain in his left arm, and leg, as well as shoulder pain, and trouble with his right eye. (CX 30, p. 7). An MRI of the lumbar spine, performed on February 7, 2001, demonstrated excessive epidural fat on L5-S1 resulting in a narrowing of the thecal sac, but there was no evidence of disc herniation or forminal stenosis. *Id*. Dr. Jenkins who performed the MRI thought it was indicative of L5-S1 epidural lipomatosis. (EX 3, p. 9). A CPT of the nerves from L1 through S1 showed severe right S1 radiculopathy. (CX 30, p. 7). After reading Dr. Lugo's notes, Dr. Abadco assessed Claimant's problem as Wallenberg Syndrome with brain stem CVA, hypertension, diabetes mellitus, and neuropathic pain and central pain. *Id*. at 9-10. Dr. Abadco's plan was to refer Claimant to Dr. Domingue, a neurologist, for further evaluation and treatment, and to Dr. Callendar, a toxic environmental specialist, to evaluate his condition. *Id*. at 10. Claimant also related that he had trouble seeing a new physical therapist because he did not have $650.00 to make an up-front payment for his initial office visit. *Id*. at 11. Dr. Abadco told Claimant not to go back to physical therapy because he had undergone physical therapy for two years and it could no longer improve him functionally. *Id*.

On March 13, 2001, Dr. Abadco issued an addendum to Claimant's medical history and diagnostic studies. (CX 30, p. 3). Accordingly to Dr. Abadco, Claimant's case was referred to Dr.

Nassetta, a toxicologist, who related that Claimant was exposed to zinc bromide. *Id*. Opining that there is a definite association between Claimant's exposure and his disease, Dr. Abadco thought more information was needed regarding his diagnosis of Wallenberg's Syndrome and such a causation analysis would best be performed by a occupational neurotoxicologist. *Id*. at 4.

In response to a letter from Claimant's attorney, Dr. Abadco stated that conditions at Claimant's work aggravated or exacerbated a pre-existing condition to bring about the onset of Claimant's stroke. (CX 30, p. 1). Regarding a causal relationship between Claimant's back and his workplace accident, Dr. Abadco only stated that the burning feeling in his legs is more likely related to stroke symptoms rather than to any mechanical source, but his back condition was related to the stroke inasmuch as Claimant fell due to dizziness related to the stroke. *Id*.

On September 4, 2001, Dr. Hubble, also of Southern Pain and Anesthesia Consultants, diagnosed Claimant with lumbar radiculopathy and left side neuropathic pain. (CX 30, p. 18). By November 26, 2001, Dr. Hubble noted that Claimant's prognosis was good and that Claimant had reduced pain, increased leg circulation and strengthened the muscles in his legs. *Id*. at 17.

**(9) Medical Records of Dr. James Domingue**

On September 17, 2001, Dr. Domingue, a neurologist, examined Claimant on a referral from Dr. Abadco. (EX 5, p. 3). Dr. Domingue listed Claimant's problems as: stroke, hypertension, diabetes, low back pain and vascular headache. *Id*. at 5. Dr. Domingue opined that Claimant had a stroke because his hypertension, diabetes and smoking were all risk factors for a stroke. *Id*. Dr. Domingue could not discern any relationship between chemical exposure (calcium bromide) or presumed dehydration to the onset of the stroke. *Id*. He also attributed Claimant's low back pain to an altered gait and the fact that Claimant had gained nearly eighty pounds. *Id*. at 4, 5. Regarding the need for another MRI at a higher resolution to ascertain diagnostic data on Claimant's stroke, Dr. Domingue related that Claimant would not likely be able to fit into a closed scanner. *Id*. at 2.

**(10) Medical Records of Dr. Eric G. Comstock**

Employer asked Dr. Comstock, a occupational, environmental and cultural toxicologist, to issue a toxicology report on Claimant concerning the relationship, if any, between the potential for exposure to one or more chemical sources in the workplace and the clinical course sustained by Claimant following his exposure on June 3, 1999. (EX 14, p. 1). On March 13, 2002, Dr. Comstock issued a report conveying that he was able to discern that the chemical Claimant was exposed to was calcium chloride diluted in sea water. *Id*. at 2. Thus, Dr. Comstock excluded the analysis of Dr. Nassetta because bromides have "extremely diverse toxic implications and bromine has been ruled out as being present in the patient's occupational setting." *Id*.

Dr. Comstock opined that Claimant's clinical course was consistent with a brainstem infarct especially considering his history of poorly-controlled hypertension. (EX 14, p. 2). Additionally Claimant's uncontrolled levels of blood sugar indicated that Claimant was not compliant with his

treatment recommendations. *Id*. at 3. Dr. Comstock related that the brainstem stroke as a result of an infarct was a spontaneous occurrence and exposure to calcium chloride "had no possible relationship whatsoever" to Claimant's clinical course. *Id*.

Dr. Comstock further related that calcium chloride was an "extremely innocuous material." (EX 14, p. 3). Both calcium and chloride were necessary elements for the normal function of the body. *Id*. The only adverse affect of direct contact with undiluted calcium chloride is that it is a desiccant. *Id*. Claimant's continuing illnesses and disability was the result of the "diseases of life and a condition for which hypertension is an extremely high risk factor." *Id*.

**(11) Deposition of Dr. Jay Martin Barrash**

Employer noticed the deposition of Dr. Barrash, a neurological surgeon, on May 7, 2002, to review Claimant's medical records. (EX 16, p. 1, 5-6). Dr. Barrash opined that Claimant suffered from a stroke. *Id*. at 10. Wallenberg's syndrom occurs when the posterior fossa circulation, a blood vessel in the back of the brain, becomes occluded. *Id*. Less frequent than a classic stroke, and more devastating, Claimant showed signs of Wallenberg's syndrom because he had double vision, brain stem symptoms, imbalance, cross hemiparesis, vascular lesions and sensory and motor symptoms on opposite sides. *Id*.

Wallenberg's syndrome is a cerebral vascular disease, caused by a multitude of things such as hypertension, diabetes, high cholesterol, high triglycerides, family history, non-compliance with medications, gout, Afro American, and smoking. (EX 16, p. 13-14). Claimant was at particular risk because he was diabetic hypertensive, non compliant with medicine, a smoker, obese, Afro American, and he had high cholesterol and high triglycerides. *Id*. at 14. All of these factors were present for many years before Claimant's workplace accident. *Id*. at 14-15. Dr. Barrash opined that the calcium chloride Claimant was exposed to had absolutely no affect on Claimant and did not contribute to his stroke. *Id*. at 16.

Dr. Barrash also stated the Claimant working conditions and sickness, that caused vomiting and dizziness, among other complaints, did not play even the smallest part in Claimant's stroke. (EX. 16, p. 17). Dr. Barrash explained this statement by stating that Claimant could have been sitting at home, or sleeping - irrespective of any environmental condition - Claimant was going to have a stroke because he had all the prodrome making a stroke inevitable. *Id*. The fact that Claimant was not diagnosed with diabetes until shortly after his stroke did not change Dr. Barrash's opinion because hospital records indicated that on June 4, 1999, his blood sugar was elevated to 143, which is high enough for diabetes. *Id*. at 18.

On cross-examination, Dr. Barrash testified that over-exertion may have no affect whatsoever on a person pre-disposed to having a stroke, but a person could become dehydrated and have a stroke. (EX 16, p. 23). Dr. Barrash acknowledged that it was a "remote possibility" that it happened to Claimant. *Id*. The fact that Claimant was vomiting and had diarrhea could participate and add to any dehydration that Claimant might have. *Id*. One of the symptoms of a posterior fossa stroke,

however, was nausea and vomiting and dehydration may come about as the stroke progresses. *Id*. at 29. Claimant had no evidence of dehydration. *Id*. at 30. Dr. Barrash admitted that Claimant's back condition was due to his stroke inasmuch as it came about as a result of his stroke. *Id*. at 27. In approximately seventy-five percent of all cases in which he is called upon to review records, Dr. Barrash works for the defense counsel. *Id*. at 26. In malpractice cases, however, about seventy-five percent of Dr. Barrash's work is performed for plaintiff's counsel. *Id*.

**(12) Weather Records of Meteorologist Rob Perillo**

At the request of Employer's attorney, Mr. Perillo investigated the weather conditions during the period of May 28, 1999, to June 4, 1999, for the platform where Claimant alleged he was injured. (EX 12, p. 1). Mr. Perillo investigated winds, waves, temperatures, heat indices and general weather conditions. *Id*.

Large scale meteorological patterns were unremarkable with surface high pressure over the Eastern Gulf of Mexico combined with low pressure troughing in the plains states to produce a moderately light flow of weather, winds and waves at the site throughout the seven day period. (EX 12, p. 1-2). Winds were fairly constant out of the southwest at twelve to eighteen knots, and a few showers were in the vicinity on May 28th and 29th. *Id*. at 2. Seas were generally calm and ranged between two and four feet. *Id*. Throughout the week temperatures ranged from the low to upper 80s. *Id*. On May 29-30 temperatures topped out at 88 degrees. *Id*. On May 31, 1999, the platform was exposed to winds near 12-15 knots, clear skies and a high near 89 degrees. *Id*. Although the sky was cloudy on May 29, fair skies prevailed on May 30-31, 1999. *Id*. On June 4, 1999, there were clear skies, temperatures in the upper eighties and winds out of the southeast at 14-17 knots. *Id*. at 3.

**(13) Deposition of David Lester**

On April 12, 2002, Employer noticed the deposition of Mr. Lester, a driller working on the same platform and the same shift as Claimant when Claimant's alleged injury occurred. (EX 15, p. 7-8, 12). Mr. Lester related that on May 28, 1999, the crew was "skidding the well" to center operations over a new area. *Id*. at 10. Mr. Lester kept personal notes in his "tally book" that he used to fill out the IADC reports at a later date. *Id*. at 11. On May 29, 1999, Mr. Lester indicated that there were no problems with the well. *Id*. at 13. On May 30, 1999, a tong operator began performing operations at 3:00 a.m. and at 5:00 a.m. when Clamant's shift started, he was "laying down PUP joints, seven joints of two and seven-eights." *Id*. at 14. "Nine five calcium chloride" was being reversed out of the well. *Id*. Mr. Lester could not remember whether the well was wet or dry when Claimant was operating the tongs. *Id*. at 16. From 6:30 a.m. to 7:30 a.m. on May 30, 1999, he "reversed out" discovering ten barrels of fluid contaminated with cement. *Id*. at 19. Starting at 7:30 a.m. Claimant was needed to lay down pipe for the rest of the day. *Id*. On May 31, 1999,

Claimant operated the tongs from 7:00 a.m. to 8:00 a.m., and most likely operated them again from 10:30 a.m. to 11:00 a.m., and Mr. Lester did not have a clear recollection of whether Claimant worked after that point. *Id*. at 24-25.

Mr. Lester testified that he was responsible for safety on the rig floor and that he conducts a safety meeting every day in the TV room. (EX 15, p. 30). Most of the time third party crews also attend the meetings. *Id*. Individuals who are hurt or sick are not allowed to work on the rig floor because they pose a danger to others. *Id*. at 31. If someone was throwing-up, dizzy, or nauseated, Mr. Lester would not allow them on the rig floor. *Id*. at 32. If a person was suffering from heat exhaustion, Mr. Lester stated that it was a policy to report the problem, but to do so he would have to take time off the drill floor. *Id*. at 34. If a worker told the barge engineer that he was sick, the barge engineer usually reported that fact to the driller. *Id*. at 35. Mr. Lester did not remember if Claimant was sick, he made no notations and he testified that due to the passage of time he really could not remember what Claimant did or did not do aboard the rig. *Id*. at 35-37.

## IV. DISCUSSION

### A. Contention of the Parties

Claimant contends that even though he was pre-disposed to having a stroke, his over-exertion, and heat exposure at work exacerbated or aggravated his underlying condition to hasten the onset of his stroke. Claimant asserts that he established a *prima facie* case for compensation by showing he was injured at work and that conditions at work could have cause his injury, and that Employer had failed to rebut this evidence. Accordingly, Claimant seeks wage benefits from June 4, 1999, to the date of decision and either permanent or temporary total disability thereafter. Claimant also seeks penalties in accordance with Section 14(e) on all unpaid compensation.

Employer contends that Claimant is not a credible witness based off inconsistencies in his testimony as compared to the medical and other objective evidence. Likewise, Employer asserts that Dr. Lugo's medical opinions are entitled to less weight than Drs. Domingue and Barrash. Employer also contends that even if Claimant presented a *prima facie* case for compensation, Employer presented substantial evidence to rebut that presumption. Based off the record as a whole, Claimant failed to carry his burden that his disability was caused by his employment. Specifically, Employer asserts that Claimant's exposure to calcium chloride had no affect whatsoever on the onset of Claimant's stroke and that Claimant's employment was irrelevant to the onset of his stroke considering his multiple pre-existing risk factors. Additionally, Employer alleges that Claimant never experienced a fall that would give rise to any back complaints as there is an absence in the medical records of any reports of a fall and physicians have related Claimant's back and lower extremity complaints to his stroke.

Furthermore, Employer contends that conditions at work could not have contributed to Claimant's stroke because Claimant's stroke began in the early morning hours of May 30, 1999, and

that shortly afterwards Claimant alleged he was exposed to calcium chloride and the onset of his symptoms began. Finally, Employer argues that Claimant failed to introduce any evidence that his medical bills from Memorial Medical Center, Acadiana Family Physicians, and Dr. Lugo had anything to do with treatment of his stroke, and that prescription drug costs are unrelated - especially in light of the fact that Claimant's diabetes pre-dated his alleged work-pace accident. Similarly, Employer asserts that the medical bills from Lafayette General Medical Center must be reconsidered at a later date as there is no evidence as to what amount of the bill relates to Claimant's stroke.

**B. Credibility**

It is well-settled that in arriving at a decision in this matter the finder of fact is entitled to determine the credibility of the witnesses, to weigh the evidence and draw his own inferences from it. *Banks v. Chicago Grain Trimmers Association, Inc.*, 390 U.S. 459, 467, 88 S. Ct. 1140, 1145-46, 20 L. Ed. 2d 30 (1968); *Atlantic Marine, Inc. and Hartford Accident & Indemnity Co. v. Bruce*, 661 F.2d 898, 900 (5th Cir. 1981); *Todd Shipyards Corporation v. Donovan*, 300 F.2d 741, 742 (5th Cir. 1962). A claimant's discredited and contradicted testimony is insufficient to support an award. *Director, OWCP v. Bethlehem Steel Corp.*, 620 F.2d 60, 64-65 (5th Cir. 1980); *Mackey v. Marine Terminals Corp.*, 21 BRBS 129, 131 (1988); *Sylvester v. Bethlehem Steel Corp.*, 14 BRBS 234, 236 (1981).

Employer highlighted several instances in the record to demonstrate that Claimant is not a credible witness. First, Claimant gave inconsistent descriptions of his alleged injury. Claimant testified that fluid was spraying from the top of the tubing being pulled out of the well - a fact directly contradicted by Tyler Livingston as physically impossible. (Tr. 36, 57, 103-04). Second, Claimant testified that he began tong operations on his third day on the rig spending two and one-half hours pulling nine joints of pipe. (Tr. 54-55, 57, 61). According to ENSCO daily drilling reports Claimant pulled seven joints of pipe in one hour, between 5:00 and 6:00 a.m. on May 30, 1999. (EX 9, p. 17). Third, Claimant stated that the weather conditions on the rig were very hot, eighty-nine to ninety degrees, and that he was soaking wet beneath his slicker suit. (Tr. 35, 37). In Claimant's deposition he alleged temperatures were around one-hundred degrees. (Tr. 59). Employer's meteorologist, Mr. Perillo, however, established that temperatures during the week Claimant was injured were in the low to upper eighties. (EX 12, p. 2).

I note that there were several inconsistencies between Claimant's testimony and the actual sequence of events that took place on the platform. I am also aware that nearly three years had passed since the events occurred and that Claimant suffered from a stroke that affected his brain. Based on my observation of the witness's demeanor at hearing, I do not find Claimant purposefully attempted to mislead the Court and I attribute any inconsistencies to his illness and the passage of time. For some Claimant's testimony, such as his statement that calcium chloride was spewing from the top of the pipe, I find his statements incredible. On the other hand, I find certain statements Claimant made are credible. For instance, Claimant testified that Dr. Bunnell told him at Memorial Medical Center that he was dehydrated. (Tr. 47). I find this assertion credible because Claimant was working on a hot day, began work wearing a rain slicker, was exposed to a desiccant, and had several

reported symptoms of a heat injury such as cotton mouth, cramping, sweating, and abnormal body temperature. The fact that dehydration was not mentioned in Dr. Bunnel's medical reports is not determinative of the issue because a minor and relatively innocuous heat injury pales in comparison to a brain stem stroke. I also note that Claimant's testimony was consistent in that shortly after the accident, he complained to his treating physician, Dr. Lugo, that he became over-heated. (EX 2, p. 73). Likewise, Dr. Lugo opined that Claimant's symptoms supported a finding that he was over-heated. (CX 33, p. 10). Therefore, while I do not credit all of Claimant's testimony, I find that in some respects Claimant made a credible witness and thus, I credit certain portions of his testimony even though his sequence of events may be slightly skewed by the passage of time and by virtue of his stroke.

**C. Causation**

**C(1) Section 20 Presumption**

Section 20 provides that "[i]n any proceeding for the enforcement of a claim for compensation under this Act it shall be presumed, in the absence of substantial evidence to the contrary - - (a) that the claim comes within the provisions of this Act." 33 U.S.C. § 920(a) (2000); *Kubin v. Pro-Football, Inc.*, 29 BRBS 117, 119 (1995); *Addison v. Ryan Walsh Stevedoring Co.*, 22 BRBS 32, 36 (1989); *Leone v. Sealand Terminal Corp.*, 19 BRBS 100, 101 (1986). To rebut the Section 20(a) presumption, the Employer must present substantial evidence that a claimant's condition is not caused by a work related accident or that the work related accident did not aggravate Claimant's underlying condition. *Port Cooper/T Smith Stevedoring Co. v. Hunter*, 227 F.3d 285, 287 (5th Cir. 2000); *Gooden v. Director, OWCP*, 135 F.3d 1066, 1068 (5th Cir. 1998). Under the aggravation rule, an entire disability is compensable if a work related injury aggravates, accelerates, or combines with a prior condition. *Independent Stevedore Co. v. O'Leary*, 357 F.2d 812, 814-15 (9th Cir. 1966); *Kubin*, 29 BRBS at 119.

**C(1)(a) Prima Facie Case**

To establish a *prima facie* claim for compensation, a claimant need not affirmatively establish a connection between work and harm. Rather, a claimant has the burden of establishing only that: (1) the claimant sustained physical harm or pain; and (2) an accident occurred in the course of employment, or conditions existed at work, which could have caused the harm or pain. *Kier v. Bethlehem Steel Corp.*, 16 BRBS 128 (1984). Once this *prima facie* case is established, a presumption is created under Section 20(a) that the employee's injury or death arose out of employment. Here, Claimant established that he was exposed to a certain amount of calcium chloride, that he suffered from a stroke at work and had to be flown by helicopter from the platform to Memorial Medical Center at Port LaVaca Texas. Claimant was diagnosed at Memorial Medical Center as having a probable brain stem infarction. (CX 31, p. 105). On June 30, 1999, Dr. Martin diagnosed Wallenberg Syndrome. (CX 27, p. 18). Dr. Lugo stated that Claimant's working conditions contributed to the onset of his stroke. (CX 28, p. 1). Dr. Rubin, who diagnosed Labyrinthine Abnormality, related Claimant's condition to chemical exposure. (CX 29, p. 4). Dr.

Abadco causally related Claimant's impairments to his working conditions and related that Claimant's back problems were caused by his employment insomuch as his stroke caused dizziness which caused Claimant to fall and hurt his back. (CX 30, p. 1). Accordingly, Claimant has established a *prima facie* case that his harm was caused by his work.[3]

**C(2) Rebuttal of the Presumption**

"Once the presumption in Section 20(a) is invoked, the burden shifts to the employer to rebut it through facts - not mere speculation - that the harm was not work related." *Conoco, Inc.*, 194 F.3d at 687-88 (citing, *Bridier v. Alabama Dry Dock & Shipbuilding Corp.*, 29 BRBS 84 (1995)); *Hampton v. Bethlehem Steel Corp.*, 24 BRBS 141, 144 (1990); *Smith v. Sealand Terminal*, 14 BRBS 844 (1982). The Fifth Circuit further elaborated:

> To rebut this presumption of causation, the employer was required to present *substantial evidence* that the injury was not caused by the employment. When an employer offers sufficient evidence to rebut the presumption--the kind of evidence a reasonable mind might accept as adequate to support a conclusion-- only then is the presumption overcome; once the presumption is rebutted it no longer affects the outcome of the case.

*Noble Drilling v. Drake*, 795 F.2d 478, 481 (5th Cir. 1986) (emphasis in original). *See also, Conoco, Inc., v. Director, OWCP*, 194 F.3d 684, 690 (5th Cir. 1999)(stating that the hurdle is far lower than a "ruling out" standard).

Here, Employer presented substantial evidence sufficient to rebut Claimant's *prima facie* case of causation that Claimant's stroke could not have been caused by his employment. Dr. Comstock, an expert in occupational, environmental and cultural toxicology, stated the calcium chloride Claimant was exposed to was "extremely innocuous" and "had no possible relationship whatsoever" to Claimant's clinical course. (EX 14, p. 2). Likewise, both Mr. Livingston and Mr. Barnhill testified that Claimant could not have been exposed to the quantity of calcium chloride that Claimant alleged, and that they had been exposed to the chemical without ever having any adverse affects. (Tr. 104, 112, 159-161). Furthermore, Dr. Comstock and Barrash opined that Claimant stroke was due to a history of poorly controlled hypertension and that Claimant's continuing illness and disability was the result of the "diseases of life" having nothing to do with Claimant's work requirements. (EX 14, p. 3; EX 16, p. 17). Similarly, Dr. Domingue could not discern any relationship between Claimant's

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[3] At hearing Claimant argued that his diabetes was caused by his employment. (Tr. 8). Absolutely no evidence was presented on this issue to establish a *prima facie* case for compensation. If fact, all the medical evidence is contrary. Claimant has a family history of diabetes, (EX 1, p. 2; EX 2, p. 35), and on the day he was flown to Memorial Medical Center, Claimant's blood sugar level was 143. (EX 4, p. 23). Dr. Barrash testified that Claimant already had diabetes when admitted to the hospital and that Claimant had diabetes long before the alleged accident occurred. (EX 16, p. 18).

chemical exposure, or presumed dehydration and the onset of his stroke. (EX 5, p. 3). Additionally, Drs. Lugo and Martin stated that Claimant had many pre-existing factors that made a stroke likely under any circumstance. (CX 33, p. 10; CX 27, p. 1). As established by Drs. Abadco and Barrash, Claimant's back condition was only related to his employment inasmuch as his stroke was related to his employment. (CX 30, p. 1; EX 16, p. 27). Accordingly, I find that Employer has produced substantial evidence to rebut Claimant's *prima facie* case of causation.

**C(3) Causation Based on the Record as a Whole**

Once the employer offers sufficient evidence to rebut the Section 20(a) presumption, the claimant must establish causation based on the record as a whole. *Noble Drilling Co. v. Drake*, 795 F.2d 478, 481 (5th Cir. 1981). If, based on the record, the evidence is evenly balanced, then the employer must prevail. *Director, OWCP v. Greenwich Colleries*, 512 U.S. 267, 281 (1994).

**C(3)(a) Diagnostic Evidence**

When Claimant was admitted to Memorial Medical center in Port LaVaca, Texas, he underwent a series of tests including: a CT scan of the brain, which was negative; a brain MRI, which was normal; and a bilateral carotid doppler ultrasound, which showed minimal arteriosclerotic plaque in the right common carotid artery and its branches as well as hard plaque on the left side. (CX 31, p. 108-110). A June 23, 1999 thoracic arch aortogram revealed a "20% diameter stenosis proximal right internal cartotid artery 2 cm from its origin, " and mild to moderate diffuse stenotic narrowing of the vertebral basilar artery system. (CX 32, p. 224). X-rays of the cervical spine taken on June 19, 1999, reveled mild generalized degenerative changes but was otherwise unremarkable. *Id*. at 223. Likewise, a CT scan of the brain was unremarkable. *Id*. at 222.

An MRI of the lumbar spine, performed on February 7, 2001, demonstrated excessive epidural fat on L5-S1 resulting in a narrowing of the thecal sac, but there was no evidence of disc herniation or forminal stenosis. (CX 30, p. 7). Dr. Jenkins, who performed the MRI, thought it was indicative of L5-S1 epidural lipomatosis. (EX 3, p. 9). A CPT of the nerves from L1 through S1 showed severe right S1 radiculopathy. (CX 30, p. 7). None of the diagnostic evidence is in dispute and all parties agree that Claimant suffered from a stroke.

**C(3)(b) Sequence of Events**

Although Claimant' seven day tour began on May 28, 1999, he was not required to operate the tongs until May 30, 1999. (Tr. 49, 51 ). Claimant did spend some time to prepare his equipment. (Tr. 51). On May 30, 1999, considering the fact that Claimant began work at 5:30 a.m., Claimant was required to operate the tongs prior to 6:00 a.m. to perform the activity of: "Pull out of hole with tubing string, hanger, pop joints, and seven joints 2-7/8 tubing." (Tr. 62, 108; EX 9, p. 17). At 7:30 a.m. Claimant was required to pull tubing from the well, a job that lasted until 4:00 p.m., or eight and one-half hours. (Tr. 114; EX 9, p. 17). Claimant also testified that his work did not end at 4:00 p.m.

because he was required to train another person to operate the tongs and his work day did not end until around 8:00 p.m. (Tr. 63-64).
Temperatures on May 30, 1999, topped out around eighty-eight degrees. (EX 12, p. 2).

May 30, 1999, was the day that Claimant alleged exposure to calcium chloride and alleged the onset of his sickness and other symptoms of a stroke. (Tr. 51, 109). Claimant testified that about an hour after he was first exposed to the calcium chloride (which occurred before 6:00 a.m. in the morning), he began to feel cramping in his stomach and dry mouth. (Tr. 62-63). On June 27, 1999, Claimant stated to Dr. Martin that he began to experience symptoms of dizziness and nausea 3:30 p.m. (CX 27, p. 5). Later in the evening on May 30, 1999, Claimant began experienced vomiting and diarrhea. (Tr. 62).

**C(3)(c) Physicians Causally Relating Claimant's Impairments to Working Conditions**

Dr. Lugo's impression was that Claimant had suffered a stroke to the brainstem area. (CX 28, p. 1). Dr. Lugo stated that Claimant was working strenuously in very hot conditions prior to the onset of his symptoms. *Id*. Although, calcium chloride would not be a likely cause for a stroke, working strenuously in hot conditions could exacerbate or aggravate a pre-existing condition and have a causative role in bringing about Claimant's condition. (CX 33, p. 8). Hot weather conditions act to deplete an individual's fluids, and depending on the health of a person, can affect their blood constitution. *Id*. at 10. Dr. Lugo defined over-exertion as excessive sweating without the proper intake of fluids, or the excessive production of heat in the body. *Id*. at 20. Excessive heat is a relative term and is defined differently depending on the individual. *Id*. In Claimant's case, Dr. Lugo stated that one must look at the symptoms of dehydration - dizziness, lightheadedness, excessive thirst, weakness - to determine what was excessive heat. *Id*. Claimant would likely have a stroke regardless of whether he was working, but given the circumstances, Dr. Lugo opined that the situation contributed to the onset of the stroke. *Id*. at 10.

Similarly, Dr. Martin directly related the onset of Claimant's stroke to conditions that existed at work. Acknowledging that Claimant had pre-existing conditions for suffering a stroke, Dr. Martin related that over-exertion and heat exposure could aggravate his pre-existing condition and dehydration could have decreased blood volume which could also be a contributing factor to the onset of a stroke. (CX 27, p. 1).

Based on his history, Dr. Rubin connected Claimant's condition to this chemical exposure, but he stated that he was not qualified to completely explain Wallenberg's Syndrome. (CX 29, p. 4). Dr. Rubin did not explain the causative analysis and as such I entitle his opinion to less weight.

On March 13, 2001, Dr. Abadco examined the issue of causation after she obtained records from Dr. Nassetta relating that Claimant was exposed to zinc bromide. (CX 30, p. 3). Opining that there is a definite association between Claimant's exposure and his disease, Dr. Abadco thought more information was needed regarding his diagnosis of Wallenberg's Syndrome and such a causation

analysis would best be performed by a occupational neurotoxicologist. *Id*. at 4. In response to a letter from Claimant's attorney, however, Dr. Abadco stated that conditions at Claimant's work aggravated or exacerbated a pre-existing condition to bring about the onset of Claimant's stroke. (CX 30, p. 1). Regarding a causal relationship between Claimant's back and his workplace accident, Dr. Abadco only stated that the burning feeling in his legs is more likely related to stroke symptoms rather than to any mechanical source, but his back condition was related to the stroke inasmuch as Claimant fell due to dizziness related to the stroke. *Id*. Because Dr. Abadco did not explain how chemical exposure and the stroke are related, and in light of her deference to a neurotoxologist, I give Dr. Abadco's opinion less weight concerning the connection between the stroke and Claimant's work.

**C(3)(d) Physicians not Finding a Causal Connection Between Claimant's Harm and Working Conditions**

Dr. Domingue opined that Claimant had a stroke because his hypertension, diabetes and smoking were all risk factors for a stroke. (EX 5, p. 5). Dr. Domingue could not discern any relationship between chemical exposure (calcium bromide) or presumed dehydration to the onset of the stroke. *Id*. He also attributed Claimant's low back pain to an altered gait and the fact that Claimant had gained nearly eighty pounds. *Id*. at 4, 5.

On March 13, 2002, Dr. Comstock issued a report conveying that he was able to discern that the chemical Claimant was exposed to was calcium chloride diluted in sea water. (EX 14, p. 2). Dr. Comstock opined that Claimant's clinical course was consistent with a brainstem infarct especially considering his history of poorly-controlled hypertension. *Id*. Additionally Claimant's uncontrolled levels of blood sugar indicated that Claimant was not compliant with his treatment recommendations. *Id*. at 3. Dr. Comstock related that the brainstem stroke as a result of an infarct was a spontaneous occurrence and exposure to calcium chloride "had no possible relationship whatsoever" to Claimant's clinical course. *Id*.
Dr. Comstock further related that calcium chloride was an "extremely innocuous material." *Id*. at 3. Both calcium and chloride were necessary elements for the normal function of the body. *Id*. The only adverse affect of direct contact with undiluted calcium chloride is that it is a desiccant. *Id*. Based on his review of the record, Dr. Comstock concluded that Claimant's continuing illnesses and disability was the result of the "diseases of life and a condition for which hypertension is an extremely high risk factor." *Id*.

Dr. Barrash related that Claimant was at particular risk for a stroke because he was diabetic hypertensive, non compliant with medicine, a smoker, obese, Afro American and he had high cholesterol and high triglycerides. (EX 16, p. 14). All of these factors were present for many years before Claimant's workplace accident. *Id*. at 14-15. Dr. Barrash opined that the calcium chloride Claimant was exposed to had absolutely no affect on Claimant and did not contribute to his stroke, and he opined that Claimant could have been sitting at home, or sleeping - irrespective of any environmental condition - and still have suffered a stroke because Claimant had all the prodrome. *Id*. at 16-17. Working conditions and his sickness that caused vomiting and dizziness, did not play even the smallest part. *Id*. at 17. The fact that Claimant was not diagnosed with diabetes until shortly

after his stroke did not change Dr. Barrash's opinion because hospital records indicated that on June 4, 1999, his blood sugar was elevated to 143, which is high enough for diabetes. *Id*. at 18. Also, Dr. Barrash asserted that there was no evidence that Claimant was dehydrated. *Id*. at 30. Dr. Barrash admitted that Claimant back condition was due to his stroke inasmuch as he well as a result of his stroke. *Id*. at 27.

**C(3)(e) The Jurisprudence**

In *Gardner v. Bath Iron Works Corp.*, 11 BRBS 556, 558 (1979), the Board found a compensable injury when the claimant, Gardner, had a pre-existing problem with his legs caused by bilateral venous insufficiency, which was a progressive disease cumulating in symptoms such as ulcers, swelling and dermatitis. The same symptoms formed the basis of Gardner's claim under the Act. *Id*. The employer argued that Gardner's symptoms were a result of neither an accident nor an injury and that the symptoms did not arise out of or occur in the course and scope of employment. *Id*. Regarding the "accident" element, the Board reflected that Gardner merely engaged in his usual and ordinary employment activity, which required prolonged standing. *Id*. at 558-60. Reasoning that it made no difference that Gardner was not exposed to anything out of the ordinary, and that the injury may have occurred wherever Gardner may have been, the Board stated that it was the "unintentional effect of the of the strain or exertion" that was covered by the Act. *Id*. at 561. (Citing *Wheatley v. Adler*, 407 F.2d 307, 311 (D.C. Cir. 1968); *Glen Falls Indemnity Co. v. Henderson*, 212 F.2d 617 (5th Cir. 1954)). Accordingly, focusing on the employment and not the pre-existing disease, it was of no consequence that Claimant's ultimate injury would result absent any employment, and the proper inquiry is whether Gardner's injury was an unexpected result of his employment. *Id*. Claimant clearly did not intend to injure himself. *Id*. Therefore, the Board determined that Claimant suffered an "accident" within the meaning of the Act. *Id*. at 564.

Concerning the "arising out of" and "in the course and scope of" elements of Gardner's claim, the employer argued that there was no "aggravation" of Gardner's pre-existing disease because there was no evidence that the natural progression of Gardner's disease was caused or hastened by his employment. *Gardner*, 11 BRBS at 565. Under the aggravation rule, the Board reasoned that all a claimant had to show was that employment aggravated a symptom of the process, not that employment hastened the natural progression of a disease. *Id*. The Board held that the employer failed to present enough evidence to rebut Gardner's presumption of causation because the Board, and the ALJ, credited the reports of various physicians that the symptoms were related to employment. *Id*. at 566

Likewise, the Fifth Circuit in *Southern Stevedoring Co. v. Henderson*, 175 F.2d 863, 865-66 (5th Cir. 1949), determined that a claimant who suffered from coronary thrombrosis was entitled to compensation when the conditions of his employment required him to climb a ladder to exit a vessel and he suffered a heart attack. The Fifth Circuit elaborated:

> The Act gives compensation for accidental injury or death arising out of and in the course of employment; it does not say caused by the employment. There is no

> standard or normal man who alone is entitled to workmen's compensation. Whatever the state of health of the employee may be, if the conditions of his employment constitute the precipitating cause of his death, such death is compensable as having resulted from an accidental injury arising out of and in the course of his employment. If the workman overstrains his powers, slight though they be, or if something goes wrong within the human frame, such as the straining of a muscle or the rupture of a blood vessel, an accident arises out of the employment when the required exertion producing the injury is too great for the man undertaking the work; and the source of the force producing the injury need not be external.

*Henderson*, 175 F.2d at 866 (citations omitted).

**C(3)(f) Weighing the Conflicting Evidence**

Two other physicians of record, Dr. Staires and Dr. Nassetta, were confronted with establishing a causal relationship between Claimant' work and his symptoms. Dr. Stairs never conclusively established causation, stating only that the sequence of events favored causation, (CX 32, p. 316), and Dr. Nassetta was given bad information about the chemical Claimant contacted. (EX 1, p. 1). Furthermore, Dr. Nassetta stated that he could not make a causality determination without more information regarding the diagnosis of Wallenberg's Syndrome and a more through review of the literature. *Id*. at 4. Accordingly, I give little weight to the opinions of Drs. Staires and Nassetta regarding causation.

Likewise, I note that Dr. Abadco relied on Dr. Nassetta's report and opined that a causal connection between chemical exposure and Claimant's condition would best be made by a neurotoxicoligist. (CX 30, p. 4). Without a clear explanation, Dr. Abadco stated that conditions at Claimant's work aggravated or exacerbated a pre-existing condition to bring about the onset of Claimant's

stroke. (CX 30, p. 1). Because I find that Dr. Abadco's causal analysis is lacking an explanation as to how working conditions and the stroke are related, I give her opinion less weight.

I find that Dr. Comstock's analysis of the deleterious affects calcium chloride is well-reasoned and note that he has superior credentials as the only occupational, environmental and cultural toxicologist of record that addressed causation in regards to calcium chloride. Dr. Comstock's analysis is consistent with the testimony of Mr. Barnhill and Mr. Livingston. Only Dr. Rubin directly connected Claimant's Wallenberg Syndrome to his chemical exposure, but Dr. Rubin's opinion is entitled to less weight because he is not qualified to explain how the two were connected. As such I entitle Dr. Rubin's opinion to less weight.

No physician of record disputes that Claimant had multiple pre-existing factors to contribute to a stroke - hypertension, smoking, diabetes, high blood pressure, high cholesterol, smoking and race

- and every indication in the record dictated that a stroke was inevitable. (CX 27, p. 1; CX 28, p. 1; CX 30, p. 1; EX 5, p. 3; EX 14, p. 2, EX 16, p. 14). Drs. Lugo and Martin opined, however that Claimant's condition was aggravated by conditions at work, namely over-exertion and heat exposure. (CX 27, p. 1; CX 33, p.8-10). Even Dr. Barrash stated that a person could become dehydrated and suffer a stroke. (EX 16, p. 23, 29).

Employer's meteorologist Mr. Perillo established that temperatures during Claimant's offshore hitch ranged from the low to upper 80s, and it was 88 degrees the day Claimant stroke occurred. (EX 12, p. 2). Claimant testified that on the day of his injury he began work wearing a rain suit. (Tr. 35). IADC reports establish that Claimant spent the rest of the day pulling tubing. (EX 9, p. 17). Even though I find Claimant's testimony concerning undiluted calcium chloride spewing from the top of the pipe incredible, in light of Mr. Livingston's explanation of why it was physically impossible, the uncontradicted statements of David Lester, Calvin Barnhill and William Livingston establish that calcium chloride could spew from the joints Claimant was breaking. (Tr. 104, 159-60; EX 15, p.17). Dr. Comstock related that while calcium chloride was harmless it did act as a desiccant. (EX 14, p. 3). Although I find it unlikely that Claimant was exposed to the amount of calcium chloride he alleged, surely he was exposed to a certain amount and it is reasonable to infer that some of the solution came into contact with Claimant's skin and Claimant likely had contact in the facial area.

Based on the record as a whole I find sufficient evidence to suggest that Claimant suffered from dehydration before suffering the onset of his stroke. The only documented evidence of dehydration, or heat exhaustion, and over-exertion, come directly from Claimant in statement made for purposes of medical diagnosis and treatment to his treating physician Dr. Lugo, on June 27, 1999. (EX 2, p. 71-73). Although absent from any medical report, Claimant testified a doctor at Memorial Medical Center told him that he was dehydrated. (Tr. 47; EX 4 p. 37, 42-43, 48-78). As noted *supra*, part IV - B, I credit Claimant's statement. Supporting Claimant's assertions is the fact that he began the day working in a slicker suit, a fact which I find would accelerate the loss of fluids from the body. Also during the early morning hours Claimant was exposed to a desiccant in the early morning hours, a factor which could help to accelerate the process of dehydration. (Tr. 62-63; EX 9, p. 17). The material safety data sheet relates that calcium chloride can cause severe irritation of the digestive track, (EX 11, p. 1), and vomiting can accelerate dehydration. (EX 16, p. 23). Dr. Lugo indicated that it was possible that if Claimant swallowed some of the calcium chloride it could cause some transient gastrointestinal disturbance (vomiting) with no obvious permanent damage that would be picked up by the physicians at Memorial Medical Center. (CX 33, p. 17). Additionally, Claimant testified that during the course of the day on May 30, 1999, he experienced cotton mouth and stomach cramping followed by dizziness and nausea. (Tr. 62-63; CX 27, p. 5). After finishing the morning job Claimant spent the rest of the day laying down tubing, under clear skies on a day when temperatures reached eighty-eight degrees, another factor that would accelerate the loss of fluid from the body. (Tr. 114; EX 9, p. 17; EX 12, p. 2).

Furthermore, I note that even though Claimant was not diagnosed with a heat related injury on arrival to Memorial Medical Center, he had many of the symptoms of a heat related condition. Specifically, Claimant experienced: sweating, vertigo, thirst, stomach cramps, nausea, cotton mouth,

and abnormal body temperature of 94.9°. (Tr. 37-40, 45; EX 4, p. 15-16, 19). *See* American Institute for Preventive Medicine, *First Aid for Heat Exhaustion & Heat Stroke* <http://www.healthy.net/asp/templates.article.asp?PageType=article&ID=1291> (accessed May 22, 2002) (listing signs and symptoms of heat exhaustion as: 1) cool, clammy, pale skin; 2) sweating; 3) dry mouth; 4) fatigue, weakness; 5) dizziness; 6) headache; 7) nausea, sometimes vomiting; 8) muscle cramps; 9) weak and rapid pulse). People suffering from heat exhaustion may have low body temperatures. *Id*. *See also* DORLAND'S ILLUSTRATED MEDICAL DICTIONARY 1591 (Harcourt Brace & Co. 1994) (listing thirst and abnormal body temperatures as symptoms). Also, Dr. Lugo opined that Claimant suffered from over-exertion and dehydration. Hot weather conditions act to deplete an individual's fluids, and depending on the health of a person can affect their blood constitution. (EX 33, p. 10). Dr. Lugo defined over-exertion as excessive sweating without the proper intake of fluids, or the excessive production of heat in the body. *Id*. at 20. Excessive heat is a relative term and is defined differently depending on the individual. *Id*. In Claimant's case, Dr. Lugo stated that one must look at the symptoms of dehydration - dizziness, lightheadedness, excessive thirst, weakness - to determine what was excessive heat. *Id*. Also, I note that the sequence of events favors a finding of dehydration before the onset of a stroke. Claimant testified that he began to feel cotton mouth and cramping soon after being exposed to a desiccant. (Tr. 62-63). Claimant then worked as a tong operator for several hours before experiencing dizziness and nausea around 3:30 p.m. (CX 27, p. 5). This was followed by vomiting and diarrhea later that evening. (Tr. 62). Accordingly, Claimant had plenty of time to become dehydrated before suffering from a stroke.

Like *Gardner*, Claimant had a pre-existing condition that made an eventual disability inevitable. Also like *Gardner*, Claimant disability would have occurred whether he was at work or not, and like *Gardner* I find that Claimant suffered an "accident" at work from the "unintentional effect of the of the strain or exertion" of his job. Similar to *Henderson*, Claimant over strained his powers, "slight though they be," and suffered from over-exertion and dehydration, however minor, which constituted an accident arising out of, and in the course and scope of employment. Therefore, even though Claimant had multiple pre-existing factors that made an eventual stroke inevitable, conditions at work - wearing a rain suit, having skin contact with a desiccant, and then working on a hot sunny day - could have caused dehydration, which according to Drs. Barrash, Lugo, Abadco, and Martin, could have contributed to the onset of a stroke, by affecting his blood consistency, thus I find that Claimant has established by a preponderance of the evidence that conditions at work could have cause his impairment.

**C(3)(g) Back Injury**

Claimant contends that he fell while trying to exit the helicopter at Memorial Medical Center. (Tr. 47). Triage records reflect that Claimant complained of right back sided pain on June 4, 1999, which he alleged began the day before. (EX 4, p. 20). On June 30, 1999, Dr. Martin examined Claimant, in part, due to complaints of lower back pain. (CX 27, p. 18). Dr. Staires also noted back pain on November 22, 1999. (CX 32, p. 316). On February 7, 2001, Claimant underwent an MRI of the lumbar spine which revealed L5-S1 epidural lipomatosis, or epidural fat on L5-S1resulting in a narrowing of the thecal sac. (CX 30, p. 7; EX 3, p. 9). A CPT of the nerves from L1 through S1

revealed severe right S1 radiculopathy. (CX 30, p. 7). On September 17, 2001, Claimant related to Dr. Domingue that his back pain started after he fell existing a helicopter. (EX 5, p. 3).

Dr. Domingue attributed Claimant's low back pain to an altered gait and the fact that Claimant had gained nearly eighty pounds. (EX 5, p. 4-5). Regarding a causal relationship between Claimant's back and his workplace accident, Dr. Abadco only stated that the burning feeling in his legs is more likely related to stroke symptoms rather than to any mechanical source, but his back condition was related to the stroke inasmuch as Claimant fell due to dizziness related to the stroke. (CX 30, p. 1). Dr. Barrash connected Claimant's back condition with his stroke inasmuch as the stroke cause Claimant to become dizzy and fall in the helicopter. (EX 16, p. 27).

Regardless of whether Claimant's back condition is due to weight gain, a fall in a helicopter or is merely symptoms related to a stroke, Claimant's back condition is causally related to his employment because in each scenario, his back symptoms are due to his stroke. I find that Dr. Abadco's statement that Claimant's back symptoms are related to his stoke is not rebutted in the record. The fact that his stroke could cause back symptoms would logically lead Claimant to state to the triage unit at Memorial Medical Center that he began experiencing back symptoms the day before his alleged fall in the helicopter. As a consequence of his stroke, Claimant's physical activities were limited and it was not until October 3, 2000, that Claimant was able to ambulate up to 1 ½ miles. (CX 32, p. 17). As documented by Dr. Domingue, Claimant gained weight from 185 lbs, to 262. lbs on September 17, 2001. (EX 5, p. 4). Thus, even Dr. Domingue's statement - that Claimant's back condition is related to weight gain - establishes a causal connection to Claimant's stroke. Accordingly, whether due to symptoms of a stroke, a fall in a helicopter, or weight gain, Claimant's back condition is compensable under the Act because it is due to Clamant's stroke or manifestations of that stroke, which was hastened by Claimant's employment.

**D. Nature and Extent of Disability and Date of Maximum Medial Improvement**

Claimant seeks wage benefits from June 4, 1999, and continuing. Disability under the Act is defined as "incapacity because of injury to earn wages which the employee was receiving at the time of injury in the same or any other employment." 33 U.S.C. § 902(10). Disability is an economic concept based upon a medical foundation distinguished by either the nature (permanent or temporary) or the extent (total or partial). A permanent disability is one which has continued for a lengthy period and is of lasting or indefinite duration, as distinguished from one in which recovery merely awaits a normal healing period. *Watson v. Gulf Stevedore Corp.*, 400 F.2d 649 (5th Cir. 1968); *Seidel v. General Dynamics Corp.*, 22 BRBS 403, 407 (1989); *Stevens v. Lockheed Shipbuilding Co.*, 22 BRBS 155, 157 (1989). The traditional approach for determining whether an injury is permanent or temporary is to ascertain the date of maximum medical improvement (MMI).

The determination of when MMI is reached, so that a claimant's disability may be said to be permanent, is primarily a question of fact based on medical evidence. *Hite v. Dresser Guiberson*

*Pumping*, 22 BRBS 87, 91 (1989). *Care v. Washington Metro Area Transit Authority*, 21 BRBS 248 (1988). An employee is considered permanently disabled if he has any residual disability after reaching MMI. *Lozada v. General Dynamics Corp.*, 903 F.2d 168, 23 BRBS (CRT)(2d Cir. 1990); *Sinclair v. United Food & Commercial Workers*, 13 BRBS 148 (1989); *Trask v. Lockheed Shipbuilding & Construction Co.*, 17 BRBS 56 (1985). A condition is permanent if a claimant is no longer undergoing treatment with a view towards improving his condition, *Leech v. Service Engineering Co.*, 15 BRBS 18 (1982), or if his condition has stabilized. *Lusby v. Washington Metropolitan Area Transit Authority*, 13 BRBS 446 (1981).

In this case the parties focused on issues of causation and the record is devoid of any medical affirmative evidence concerning a date for maximum medical improvement. I note, however, there are several indication in the records that are sufficient to making a determination on the date of maximum medical improvement. First, on January 13, 2000, Dr. Staires indicated that Claimant's pain was well controlled by drug therapy. (CX 32, p. 31). Second on June 29, 2000, Dr. Rubin stated that a tentative prognosis for Claimant's future medical problems could be better made after a year of treatment and follow-up visits. (CX 29, p. 4). Third, on October 3, 2000, Dr. Lugo noted that from a neurological standpoint Claimant's condition had stabilized. (EX 2, p. 43). Dr. Lugo noted that Clamant's balance was still improving. *Id*. Fourth on March 6, 2001, Dr. Abadco related to Claimant that he should no longer pursue physical therapy because it cold no longer improve him functionally. (CX 30, p. 11). There is no evidence in the record that Claimant intends to undergo any surgery. Accordingly, based on the record I find that Claimant reached maximum medical improvement on March 6, 2001, because Claimant's pain was well controlled by drug therapy, he had stabilized from a neurological standpoint, physical therapy was no longer able to improve Claimant functionally, and March 6, 2001, was nearly a year as recommended by Dr. Rubin for making a determination on Claimant's prognosis.

The Act does not provide standards to distinguish between classifications or degrees of disability. Case law has established that in order to establish a prima facie case of total disability under the Act, a claimant must establish that he can no longer perform his former longshore job due to his job-related injury. *New Orleans (Gulfwide) Stevedores v. Turner*, 661 F.2d 1031, 1038, 14 BRBS 156 (5th Cir. 1981), *rev'g* 5 BRBS 418 (1977); *P&M Crane Co. v. Hayes*, 930 F.2d 424, 429-30 (5th Cir. 1991); *SGS Control Serv. v. Director, Office of Worker's Comp. Programs*, 86 F.3d 438, 444 (5th Cir. 1996). He need not establish that he cannot return to *any* employment, only that he cannot return to his former employment. *Elliot v. C&P Telephone Co.*, 16 BRBS 89 (1984). The same standard applies whether the claim is for temporary or permanent total disability. If a claimant meets this burden, he is presumed to be totally disabled. *Walker v. Sun Shipbuilding & Dry Dock Co.*, 19 BRBS 171 (1986). Here, no physician stated the Claimant could resume his former job. Employer has not made Claimant's former job available nor has Employer offered evidence of suitable alternative employment. Also, Dr. Lugo stated opined that Claimant would not be able to return tot eh same type of work due to difficulty with coordination and vision. (CX 33, p. 10-11). Accordingly, Claimant is entitled to continuing temporary total disability.

**E. Medical Authorization**

Under Section 7(a) of the Act, the employer/carrier "shall furnish such medical, surgical, and other attendance or treatment, . . .for such period as the nature of the injury or the process of recovery may require." 33 U.S.C. § 907(a) (2001). Because claimant has demonstrated that his harm was caused by his employment, Claimant established his entitlement to medical benefits under Section 7.

Claimant has submitted numerous medical bills. At trial Employer objected to payment of certain costs that are related to treatment for diabetes. (Tr. 9). Employer had no objection to the pharmacy bills from L&M Pharmacy (CX 24), and no objection to the pharmacy records from Delaune's Pharmacy. (CX 25). Employer specifically objected to CX 22, a bill from Acadiana Ambulance Service on June 14, 2000, and CX 16, records from Merick-Medco RX Services. In regards to pharmacy records from Walgreens (CX 23) Employer objected to any reimbursement for Humulin which is used to treat diabetes. (Tr. 14). Upon learning that Claimant contended his diabetes was caused by his workplace accident, Employer withdrew his objections relying on the merits of the case to show that the bills were not work related. (Tr. 16-17). Employer maintained its objection to CX 16 as there was no evidence as to why it was incurred. (Tr. 17).

Claimant's exhibit 34 is a list of out-of-pocket and outstanding medical bills for which he seeks payment. Specifically Claimant listed:

| | |
|---|---|
| 1) Dr. Wallace Rubin | $2,241.43 |
| 2) Neurological Associates | $680.61 |
| 3) Acadiana Family Physicians | $100.85 |
| 4) Lafayette Radiological Association | $104.18 |
| 5) Dr. Ervin Esters | $119.24 |
| 6) Lafayette General Medical Center | $944.63 |
| 7) Port LaVaca Clinic | $364.20 |
| 8) Out Patient Neurology | $724.88 |
| 9) Acadian Ambulance Service | $29.12 |
| 10) Memorial Medical Center | $636.42 |
| 11) R.S. Medical | $1,955.00 |
| 12) Dr. Doreen Abadco | $1,380.00 |
| 13) Merck Medco RX Services | $290.00 |
| 14) L & M Pharmacy | $51.40 |
| 15) Surgent Outpatient Surgery | $326.68 |

(CX 34).

Of the above charges, I find no basis in the record to make an award for several entries. I disallow the charges incurred by Dr. Ervin Esters as a relationship between his treatment and the work related injury was never established in the record. I also disallow all charges from Lafayette

General Medical Center because its medical bills reflect charges related to both Claimant's diabetes and workplace injury without separating the two categories. Likewise, I disallow the bill from Acadian Ambulance Service, and Merck Medco RX Services as Claimant has not clearly established what portion of these bills, if any is related to Claimant's workplace accident and what portion is related to the treatment of diabetes.[4] Records from L & M Pharmacy only involve Oxicontin, which is related to Claimant's work related accident by the record. Concerning the remaining charges, totaling $8,684.89, I find a sufficient basis in the record to determine that they are compensable.

**F. Section 14(e) Penalties**

Claimant contends that Employer failed to pay compensation when due and seeks statutory penalties for that failure. Section 14(e) of the Act provides:

> If any installment of compensation payable without an award is not paid within fourteen days after it becomes due, as provided in subsection (b) of this section, there shall be added to such unpaid installment an amount equal to 10 per centum thereof, which shall be paid at the same time as, but in addition to, such installment, unless notice is filed under subsection (d) of this section, or unless such nonpayment is excused by the deputy commissioner after a showing by the employer that owing to conditions over which he had no control such installment could not be paid within the period prescribed for the payment.

33 U.S.C. § 914(e) (2001).

Under the express provisions of Section 14(e), an employer can avoid the imposition of a penalty by timely filing a notice of controversion. Specifically Section 14(d) provides:

> If the employer controverts the right to compensation he shall file with the deputy commissioner on or before the fourteenth day after he has knowledge of the alleged injury or death, a notice, in accordance with a form prescribed by the Secretary, stating that the right to compensation is controverted, the name of the claimant, the name of the employer, the date of the alleged injury or death, and the grounds upon which the right to compensation is controverted.

33 U.S.C. § 814(d) (2001).

Here, the parties stipulated that Employer had knowledge of Claimant's injury on June 4, 1999, and stipulated that Employer filed a Notice of Controversion on June 11, 1999. Accordingly

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[4] Claimant may file a motion for reconsideration to submit evidence that certain medical expenses are related to Claimant's workplace injury and are compensable. *See* 20 C.F.R. § 802.206(b) (2001) (relating that a motion for reconsideration is timely if filed no later than ten days from the date the decision or order was filed in the office of the deputy commissioner).

there is no basis for assessing penalties in accordance with Section 14(e).

**G. Conclusion**

I do find that Claimant made a credible witness and that he did not attempt to mislead the Court. Any inconsistencies in his testimony can be attributed to the passage of time and to the fact that he suffered a stroke that affected his brain. Claimant established a *prima facie* case of causation because he established that working conditions could have contributed to the onset of his stroke through the records of Drs. Lugo, Martin, Rubin and Abadco. Claimant established a *prima facie* case that his back condition was related to his stroke inasmuch as his fall/weight gain was caused by his stroke, or that his back problems were a symptom of his stroke. Claimant failed to present a *prima facie* case that his diabetes could have been caused by a work related accident. Employer presented substantial evidence to rebut the presumption that claimant's stroke could have been caused by work, but based on the record as a whole Claimant established by a preponderance of the evidence that conditions at work, namely dehydration and over-exertion, could have hastened the onset of his stroke. Claimant reached maximum medical improvement on March 6, 2001, the date that Dr. Abadco related that Claimant could no longer improve functionally. There is no indication in the record that Claimant could perform his former job and no suitable alternative employment was identified. Thus, Claimant is entitled to continuing temporary total disability to March 6, 2001, and permanent total disability thereafter. Claimant is entitled to reimbursement/payment of medical expenses of $8,684.89 because this is the amount the Claimant was able to directly relate to

his work related accident. Claimant may file a motion for reconsideration to definitively link any remaining expenses to his injury. Section 14(e) penalties are not warranted because Employer filed a timely Notice of Controversion.

**H. Interest**

Although not specifically authorized in the Act, it has been an accepted practice that interest at the rate of six per cent per annum is assessed on all past due compensation payments. *Avallone v. Todd Shipyards Corp.*, 10 BRBS 724 (1974). The Benefits Review Board and the Federal Courts have previously upheld interest awards on past due benefits to insure that the employee receives the full amount of compensation due. *Watkins v. Newport News Shipbuilding & Dry Dock Co., aff'd in pertinent part and rev'd on other grounds, sub nom. Newport News v. Director, OWCP*, 594 F.2d 986 (4th Cir. 1979). The Board concluded that inflationary trends in our economy have rendered a fixed six per cent rate no longer appropriate to further the purpose of making Claimant whole, and held that "the fixed per cent rate should be replaced by the rate employed by the United States District Courts under 28 U.S.C. § 1961 (1982). This rate is periodically changed to reflect the yield on United States Treasury Bills."[5] *Grant v. Portland Stevedoring Company, et al.*, 16 BRBS 267

[5] Since the 52 week Treasury Bills are no longer auctioned, interest is now based on the 52 week average of "one year constant maturity Treasury yield" for the calendar week preceding

(1984). This order incorporates by reference this statute and provides for its specific administrative application by the District Director. *See Grant v. Portland Stevedoring Company, et al.*, 17 BRBS 20 (1985). The appropriate rate shall be determined as of the filing date of this Decision and Order with the District Director.

**I. Attorney Fees**

No award of attorney's fees for services to the Claimant is made herein since no application for fees has been made by the Claimant's counsel. Counsel is hereby allowed thirty (30) days from the date of service of this decision to submit an application for attorney's fees. A service sheet showing that service has been made on all parties, including the Claimant, must accompany the petition. Parties have twenty (20) days following the receipt of such application within which to file any objections thereto.

## VI. ORDER

Based upon the foregoing Findings of Fact, Conclusions of Law and upon the entire record, I enter the following Order:

1. Employer shall pay to Claimant temporary total disability compensation pursuant to Section 908(b) of the Act for the period from June 4, 1999, to March 6, 2001, and pay permanent total disability pursuant to Section 908(a) of the Act thereafter, based of an average weekly wage of $694.31, and a corresponding compensation rate of $462.87.

2. Employer shall pay Claimant for all future reasonable medical care and treatment arising out of his work related injuries pursuant to Section 7(a) of the Act.

3.Employer shall reimburse/pay to Claimant $8,684.89, representing medical costs related to Claimant's workplace injury and Claimant may file a motion for reconsideration to affirmatively link other costs to his workplace accident.

4. Claimant is entitled to interest on accrued unpaid compensation benefits. The applicable rate of interest shall be calculated immediately prior to the date of judgment in accordance with 28 U.S.C. §1961.

5. Claimant's counsel shall have thirty (30) days to file a fully supported fee application with the Office of Administrative Law Judges, serving a copy thereof on Claimant and opposing counsel who shall have twenty (20) days to file any objection thereto.

A
CLEMENT J. KENNINGTON
Administrative Law Judge

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the service date on the Order.